

AMENDED IN SENATE APRIL 7, 1999

**SENATE BILL**

**No. 786**

**Introduced by Senator Schiff**

February 25, 1999

---

---

An act to amend Section 1484 of, and to add ~~Sections 1193.5 and Section 1473.5~~ to, the Penal Code, relating to habeas corpus.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as amended, Schiff. Habeas corpus.

Existing law provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of the imprisonment or restraint. Application for the writ is made by petition verified by the oath or affirmation of the petitioner.

This bill would, among other things, provide that contentions raised and rejected on direct appeal shall not be cognizable on petition for a writ of habeas corpus, specify that a writ shall not issue upon any ground not raised upon direct appeal, with specified exceptions, specify that a writ shall not issue upon any ground omitted from a prior petition, with specified exceptions, specify the time to file a petition for a writ, and provide that a court may waive these limitations if it finds by a preponderance of the evidence that a miscarriage of justice would otherwise result. A court would be authorized, but not required, to order discovery for habeas purposes upon a showing of good cause *after the petition is filed and an order to show cause is issued*, but not prior to the

filing of the petition nor after the termination of the habeas proceeding.

~~The bill would require the trial judge, at the time judgment is pronounced in any case in which the defendant will be imprisoned for a felony, to instruct the defendant of the deadlines imposed by this bill and to explain that these deadlines are distinct from the deadlines imposed for filing a writ of habeas corpus in federal court.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~1 SECTION 1. Section 1193.5 is added to the Penal  
2 Code, to read:~~

~~3 1193.5. At the time judgment is pronounced in any  
4 case in which the defendant will be imprisoned pursuant  
5 to a judgment of a felony conviction, the judge shall  
6 instruct the defendant of the deadlines applicable to a  
7 writ of habeas corpus imposed by Section 1473.5 and shall  
8 explain that these deadlines are distinct from the time  
9 limitations for filing a writ of habeas corpus in a federal  
10 court to challenge a judgment of a criminal conviction.~~

~~11 SEC. 2.~~

12 SECTION 1. Section 1473.5 is added to the Penal  
13 Code, to read:

14 1473.5. (a) This section shall apply whenever a  
15 petition for a writ of habeas corpus challenges the legality  
16 of imprisonment pursuant to a judgment of a felony  
17 conviction that is entered by a superior court of this state.

18 (b) If an appeal from the conviction is pending or has  
19 been decided, the petition may be filed in the court that  
20 has or had jurisdiction of the appeal. If the court appoints  
21 a referee, the court ~~may~~ shall appoint the trial judge to act  
22 as the referee if appropriate. *Alternatively, the court that*  
23 *has jurisdiction of the appeal may issue an order to show*  
24 *cause returnable before the trial court.*

25 When a decision of the court of appeal denying relief  
26 is reviewable by the California Supreme Court under  
27 Section 1506, the petitioner may apply for review rather

1 than file an original petition for a writ in the California  
2 Supreme Court. If the court having jurisdiction of the  
3 appeal has ruled on a habeas petition in the matter, denial  
4 of another petition by the same court or any other court  
5 or judge shall be deemed to be on the grounds that any  
6 successive claims have previously been litigated and any  
7 new claims shall be barred procedurally, unless the order  
8 denying the petition states otherwise.

9 (c) Contentions that were raised by appellant and  
10 rejected by the court on appeal shall not be cognizable on  
11 habeas corpus unless the contention is based on a change  
12 in the law after the decision on appeal became final that  
13 applies under subdivision (i).

14 (d) A writ of habeas corpus shall not be issued on any  
15 ground not raised in the appeal unless one of the  
16 following conditions is true:

17 (1) The facts were not part of the appellate record and  
18 could not have been made part of the appellate record  
19 with reasonable diligence.

20 (2) The contention is based on a change in the law  
21 after the decision on appeal became final that applies  
22 under subdivision (i).

23 (e) A writ of habeas corpus shall not be issued on any  
24 ground omitted from a prior petition unless one of the  
25 following is true:

26 (1) The facts were unknown to either the petitioner ~~or~~  
27 ~~the petitioner's attorney~~ at the time of the appeal and  
28 could not, with reasonable diligence, have been known to  
29 either at that time.

30 (2) The claim is based on material facts or evidence  
31 ~~favorable to the defendant that an agent of the state~~  
32 ~~concealed or failed to turn over to the defendant in~~  
33 ~~violation of law in effect at the time.~~ *favorable to the*  
34 *defendant that could not be discovered with reasonable*  
35 *diligence at the time of the first petition because the facts*  
36 *or evidence were withheld by an agent of the state in*  
37 *violation of state law or the Constitution of the United*  
38 *States.*

39 (3) The claim is based on a change in the law after the  
40 prior petition was filed that applies under subdivision (i).

(f) If a timely petition is denied and no other review is available, a petition may be filed in the next higher court within 30 days of denial. A timely petition that is denied because the petitioner failed to state with particularity the facts upon which the petitioner seeks to have the judgment of conviction overturned shall be cured only by the filing of a new petition within the same court within 30 days.

(g) (1) Except as provided by this subdivision or subdivision (h), an untimely petition shall be dismissed. A petition is untimely if it meets any of the following conditions:

(A) It is filed more than two years after the decision on the direct appeal becomes final by denial or conclusion of review by the California Supreme Court.

(B) It is filed more than two years after the time for seeking appellate review has expired.

(C) If no appeal is taken, it is filed after more than two years after the entry of judgment.

(2) The California Supreme Court may promulgate different time standards for habeas corpus petitions in capital cases.

~~(3) The court in which a petition is filed shall not extend the time for filing a petition except as necessary under any of the following circumstances:~~

*(3) The court shall not consider the merits of an untimely petition unless at least one of the following circumstances exist:*

(A) The petitioner was prevented from filing by unlawful state action.

(B) The right asserted was newly recognized by the United States Supreme Court or the California Supreme Court and made retroactively applicable to cases on collateral review.

(C) The facts upon which the claim was based were not known to the petitioner *or his or her attorney* and could not have been discovered with reasonable diligence.

(D) A timely petition raising the same claim was pending in a lower court.

(4) A petition filed after the expiration of the time limits provided by this section or the standards promulgated by the California Supreme Court shall be deemed to have been denied on the grounds of untimeliness unless the order denying the petition states otherwise.

~~(h) The court shall waive the limitations of subdivision (c), (d), (e), (f), or (g) if it finds by a preponderance of the evidence that a miscarriage of justice would otherwise exist. As used in this subdivision, “miscarriage of justice” means any of the following:~~

~~(1) An error that resulted in a trial so fundamentally unfair that, absent the error, no reasonable finder of fact would have convicted the petitioner.~~

~~(2) The petitioner is factually innocent of the crime for which he or she was convicted or a special circumstance or enhancement allegation upon which the sentence was based is false.~~

~~(3) The death penalty was imposed by a sentencing body that had such a grossly misleading profile of the petitioner that, absent the trial error or omission, no reasonable finder of fact would have imposed a sentence of death.~~

~~(4) The petitioner was sentenced or convicted under an invalid statute.~~

~~(5) Any other factor comparable to the factors specified in this subdivision that are set forth in rules adopted by the Supreme Court.~~

*(h) The court may waive the limitations of subdivision (c), (d), (e), (f), or (g) if it finds by clear and convincing evidence:*

*(1) That error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner.*

*(2) That the petitioner is factually innocent of the crime or crimes of which he or she was convicted.*

*(3) That the death penalty was imposed by a sentencing authority that had such a grossly misleading profile of the petitioner that, absent the trial court’s error*

1 *or omission, no reasonable judge or jury would have*  
2 *imposed a sentence of death.*

3 *(4) That the petitioner was convicted or sentenced*  
4 *under an invalid statute.*

5 *In determining the applicability of the first three of*  
6 *these exceptions, the court shall assume to be true any*  
7 *claim of federal constitutional error and shall apply the*  
8 *exception solely by reference to state law.*

9 (i) The legality of the petitioner's trial or sentence  
10 shall be determined without regard to any change in law  
11 subsequent to final judgment unless the change in law  
12 does any of the following:

13 (1) It makes the conduct for which the petitioner was  
14 convicted not a crime.

15 (2) It places the punishment beyond the authority of  
16 the sentencing authority to impose.

17 (3) It changes a rule of criminal procedure essential to  
18 the fundamental fairness and accuracy of the  
19 proceedings.

20 (4) It makes the crime for which the petitioner was  
21 convicted a lesser offense.

22 (5) The change of law was made retroactively  
23 applicable by the United States Supreme Court or the  
24 California Supreme Court.

25 ~~SEC. 3.~~

26 SEC. 2. Section 1484 of the Penal Code is amended to  
27 read:

28 1484. (a) On the return of the writ, the party brought  
29 before the court or judge may deny or controvert any of  
30 the material facts or matters set forth in the return, or  
31 except to the sufficiency of the return, or allege any fact  
32 to show either that his or her imprisonment or detention  
33 is unlawful, or that he or she is entitled to his or her  
34 discharge. The court or judge shall then proceed  
35 summarily to hear proof that may be produced against or  
36 in favor of that imprisonment or detention, and to dispose  
37 of the party as the justice of the case may require. The  
38 court or judge shall have full power and authority to  
39 require and compel the attendance of witnesses, by  
40 process of subpoena and attachment, and to do and

1 perform all other acts and things necessary to a full and  
2 fair hearing and determination of the case.

3 (b) The court or judge may, but is not required to,  
4 order discovery upon a showing of good cause *after the*  
5 *petition is filed and an order to show cause has issued*. No  
6 court or judge shall have jurisdiction to order discovery  
7 extending past the termination of a habeas corpus  
8 proceeding.

9 (c) Nothing in this section shall be construed to  
10 abridge the obligation of the prosecution to disclose  
11 material exculpatory evidence as required by the  
12 California Constitution or United States Constitution.

13 ~~SEC. 4.~~

14 SEC. 3. Except as otherwise expressly provided, the  
15 provisions of this act shall apply only to cases in which  
16 judgment is entered on or after January 1, 2000.

